

REMARKS

I. Claim Status

Claims 1-29 are pending in the application and stand rejected. Claim 6 has been rejected under 35 U.S.C. § 112. Claims 1-5, 8-16, and 19-29 have been rejected under 35 U.S.C. § 102. Claims 7, 17, and 18 have been rejected under 35 U.S.C. § 103. The application has been objected to, the declaration has been objected to, and the abstract has been objected to.

II. Objections to the Application, the Declaration, and Abstract

The Office Action objects to the alterations made in the specification and to Claims 2, 3, and 6 for supposedly not complying with 37 CFR § 1.52(c) dealing with alterations either before or after the signing of the declaration. Applicants traverse this objection and request its withdrawal. Applicants note that the instant application is a National Phase entry under 35 U.S.C. § 371 resulting from an International Application (Patent Cooperation Treaty) designating the United States. The amendments in question were made during the International Stage and prior to entry into the National Phase. Therefore, the requirements of 37 CFR § 1.52(c) do not apply. Rather, the formal requirements of the Patent Cooperation Treaty apply. Applicants also note that Article 27(1) of the Patent Cooperation Treaty provides that no national law shall require compliance with requirements relating to the form or contents of the international application which are different to those which are provided for in the PCT and its Regulations. As the Office Action has not pointed to any failure to comply with International Stage requirements under the PCT, entry of this application into the National Stage, as amended is proper. The U.S. National requirement of initials and dates accompanying hand-written changes made prior to signing of the declaration cannot be applied to this International Stage application under the PCT. Therefore, the objection to the application should be withdrawn.

The Office Action also objects to the declaration as not identifying the application by application number and filing date. Applicants note that a declaration has been submitted with the instant application which references the title of the invention, Application number PCT/US99/11428 and the international filing date of May 24, 1999. As this application number (PCT/US99/11428) is an International Application designating the United States, it has the effect of a U.S. application for all purposes under Title 35 (except where otherwise provided under 35 U.S.C. § 102(e)). See, 35 U.S.C. § 363. Therefore, there is nothing improper about the declaration provided which identifies the International Application designating the United States properly. The Examiner is respectfully requested to withdraw the objection and the requirement for a new declaration.

The application is also objected to for not providing an abstract on a separate sheet. While Article 27(1) of the Patent Cooperation Treaty, also applies to this requirement, the applicants have provided the abstract on a separate sheet with this amendment for the convenience of the Examiner. No changes have been made to the abstract originally filed. Therefore, this objection should be withdrawn.

III. Rejections Under 35 U.S.C. § 112

Claim 6 has been rejected under 35 U.S.C. § 112, second paragraph as indefinite. The Office Action maintains that the word "composite" in the claim requires clarification in the context "a composite side elastic network." The Office Action provides no reasoning or evidence as to why one of ordinary skill in the art would find this claim unclear. Indeed page 33, first full paragraph, of the instant application expressly defines what is means by the phrase "composite elastomeric network." Given such guidance in the specification and the lack of any evidence that this claim is indefinite to one of ordinary skill in the art, the rejection under 35 U.S.C. § 112, second paragraph should be withdrawn.

IV. Rejections Under 35 U.S.C. § 102

Claims 1-5, 8-16, and 19-29 have been rejected under 35 U.S.C. § 102(b) as anticipated by PCT publication WO 96/31179 in the name of Ashton (herein the Ashton publication).

A. Claim 1 (and Claims 2-5, and 8-10)

Claim 1 has been rejected as anticipated by the Ashton publication. The Office Action, however, does not provide a showing that the Ashton publication properly discloses each and every feature of Claim 1. Therefore, Claim 1 is not properly rejected by the Ashton publication. For example, the Office Action points to no disclosure in the Ashton publication which shows the waistband panel extending longitudinally outwardly from the waist edge of the of the central panel **and** the waist edge of the ear panel. The Office Action simply states that these features are shown in the Ashton publication without showing how are where.

This reading of the Ashton publication is misplaced as a closer inspection of the reference reveals. For example, the Ashton publication does not show a waistband panel which extends longitudinally outwardly form the waist edge of both the central panel and ear panel → *Only central*. Panel 60 shown in FIG. 1A of the Ashton publication is described as the waist band panel. This panel extends longitudinally outwardly from only panel 62 (the medial panel). While the medial panel of the Ashton publication might be equivalent to the central panel of the instant application, Claim 1 requires that the claimed waist panel extend longitudinally outwardly from both the central panel and the ear panels. The Ashton publication shows panels 64 (FIG. 1A) which are described as ear panels. These panels however, terminate in the same longitudinal location as the waist band panel of the Ashton publication. The relationship of these three panels (central, waist and ear panels) claimed in Claim 1 is simply not present in the Ashton publication. The Office Action points to no disclosure in the Ashton publication where the relationship of panels claimed in Claim 1 of the instant application is shown.

Additionally, Claim 1 requires that the side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap each other. The Office Action cites the first line on page 8 of the Ashton publication for supposedly disclosing this aspect of Claim 1. This line, however, only discloses that panels may be

distinct areas or may coincide functionally. This disclosure is silent as to whether or not panels are separate elements which do not overlap. In any event, this general description of the functional relationship of panels to adjacent panels is of no help where the claimed physical arrangement of panels is not present in the Ashton publication. Some of the advantages of the particularly claimed relationship of panels and their lack of overlap are described (among other places) in the specification on page 33. Therefore, for at least these reasons, the Ashton publication does not anticipate Claim 1. The rejection of Claim 1 under 35 U.S.C. § 102(b) should be withdrawn. Claims 2-5 and 8-10 all depend from Claim 1. The rejections of Claims 2-5 and 8-10 over the Ashton publication are improper for the same reasons given above with respect to Claim 1. Therefore, these rejections under 35 U.S.C. § 102(b) should also be withdrawn.

B. Claim 11 (and Claims 12-16 and 19-20)

Claim 11 has also been rejected as anticipated by the Ashton publication. Contrary to the analysis provided in the Office Action, however, the Ashton publication does not anticipate Claim 11. For example, the Ashton publication does not disclose the claimed modulus of extensibility. The Office Action points to disclosure in the Ashton publication regarding the extension characteristics of stretch laminates in the Ashton device. However, these characteristics are not the same as those claimed for the continuous belt zone of the invention of Claim 11. For example, Claim 11 requires a garment with a continuous belt zone in which the modulus of extensibility at an extension of 125% is not greater than 150g/%extension. By contrast, the Office Action points to figures and disclosure showing pull extension forces for stretch laminates in grams/in at various extension levels. These parameters are not the same as those claimed, and the Office Action makes no showing that the parameters actually claimed are expressly disclosed or are inherent from the properties taught in the Ashton publication. As such, the Ashton publication cannot anticipate Claim 11. Similarly Claims 12-16 and 19-20 depend from Claim 11 and are not anticipated by the Ashton publication for the same reasons given above with respect to Claim 11. Therefore, the Examiner is respectfully requested to withdraw the rejections of Claims 11-16 and 19-20 under 35 U.S.C. § 102(b) and to allow the claims.

C. Claim 21-29)

Claims 21-29 have been canceled by this amendment. Therefore, the rejections of these claims are now moot and may be withdrawn.

V. Rejections Under 35 U.S.C. § 103

Claims 17 and 18 have been rejected as unpatentable under 35 U.S.C. § 103 over the Ashton publication. Claim 7 has been rejected under 35 U.S.C. § 103 as unpatentable over the Ashton publication in view of Heran (U.S. Patent 4,646,362).

The rejections of the Claims 17 and 18 proceed from the base rejection of Claim 11 as described above over the Ashton publication. The rejection of Claim 11 is improper for the reasons discussed above. The reasoning provided in the Office Action pertaining to Claims 17 and 18 do not serve to make out a proper *prima facie* case of obviousness in light of the deficiencies of the Ashton publication with respect to Claim 11. Therefore, the rejections of Claims 17 and 18 should be withdrawn and the claims allowed.

Similarly, the rejection of Claim 7 proceeds from the rejection of Claim 1 as described above. The addition of the Heran patent as discussed in the Office Action does not supply the missing teachings discussed above with respect to Claim 1. Therefore, the rejection of Claim 7 under 35 U.S.C. § 103 is improper and should be withdrawn.

SUMMARY

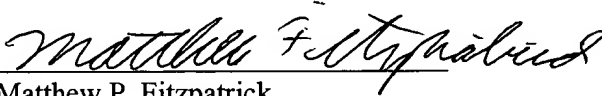
All of the relevant rejections in the Office Action have been discussed.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and that all of the claims be allowed.

Issuance of a Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

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